

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF TEXAS

3 FORT WORTH DIVISION

4

5 UNITED STATES OF AMERICA, ) CASE NO. 4:23-CR-00212-O  
6 Government, )  
7 VS. ) FORT WORTH, TEXAS  
8 KYUNG HEO, )  
9 Defendant. ) JANUARY 19, 2024  
 )  
 ) 10:05 A.M.

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11 VOLUME 1 OF 1  
12 TRANSCRIPT OF SENTENCING  
13 BEFORE THE HONORABLE REED C. O'CONNOR  
14 UNITED STATES DISTRICT COURT JUDGE

15

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1 JANUARY 19, 2024

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3 P R O C E E D I N G S

4 THE COURT: I call now Case No. 4:23-CR-212.

5 Counsel for the government is here.

6 Counsel for the defendant is here.

7 Sir, would you state your name for the record,  
8 please?

9 THE DEFENDANT: Kyung Heo.

10 THE COURT: Thank you. We are here to consider  
11 the sentencing in your case.

12 Counsel, did you and your client receive a copy of  
13 the presentence investigation report and the addendum.

14 MR. LEHMANN: Yes, Your Honor.

15 THE COURT: And did you review those documents  
16 with your client?

17 MR. LEHMANN: Yes, Your Honor.

18 THE COURT: Did the government receive these as  
19 well?

20 MS. MONTES: Yes, Your Honor.

21 THE COURT: So why wouldn't you agree to a Rule 20  
22 transfer of this case?

23 MS. MONTES: Judge, as a beginning matter, when we  
24 reached out to the Eastern District, they indicated that the  
25 stage of the investigation that they were in was very early,

1 because of our arrest that identified him in those other  
2 robberies. So they were just starting their investigation.  
3 Whereas, we were already running with our time line.

4 So once they indicated that they were not  
5 agreeing, that sort of, in a way, stops our ability to do  
6 so.

7 THE COURT: So they did not agree to the Rule 20?

8 MS. MONTES: Correct.

9 THE COURT: It was them?

10 MS. MONTES: Initially, yes, correct. We  
11 indicated we were not sure if we would agree or not, but  
12 once they said they were not in a position to agree to a  
13 Rule 20, then our hands were tied. There's nothing we could  
14 do.

15 THE COURT: All right. Do you wish to present any  
16 evidence or arguments on your objections?

17 MR. LEHMANN: No, Your Honor.

18 THE COURT: Okay. I'm going to overrule those  
19 objections not already accepted by the addendum.

20 I'm going to adopt the fact findings in these  
21 documents. I'm going to adopt the probation officer's  
22 conclusions as to the appropriate guideline calculations and  
23 determine that they should be as follows: Total offense  
24 level of 24; Criminal History Category of II; an  
25 imprisonment range of between 57 and 71 months; a supervised

1 release range of one to three years; and a fine range of  
2 between 20,000 and \$200,000.

3                  Does the government wish to be heard on  
4 sentencing?

5                  MS. MONTES: Judge, only briefly. Just to add, in  
6 our response to the sentencing memorandum, I did not include  
7 in there that we were also not agreeing to any sort of  
8 concurrent sentence.

9                  And based on the case law, we don't believe the  
10 Court can impose concurrent or consecutive sentence for an  
11 anticipated, but not yet imposed federal sentence in another  
12 federal court. Other than that, we ask that a guideline  
13 sentence be imposed in this case.

14                  THE COURT: Very good. Thank you.

15                  Counsel.

16                  MR. LEHMANN: Thank you, Your Honor.

17                  Your Honor, we strongly urge the Court to downward  
18 vary in this case. Just over one week ago we received a  
19 psychological evaluation from Dr. Kristi Compton, Forensic  
20 Clinical Psychologist in DFW. She's probably the most  
21 credible psychologist that I've worked with in almost 20  
22 years.

23                  She found Mr. Heo has been suffering from both  
24 schizophrenia and depression for some time. She opined that  
25 these mental health conditions had a significant impact on

1 his cognitive and emotional functioning and was a  
2 contributing factor in him deciding to commit the offense.

3 Most importantly though, she found that his  
4 prognosis could be significantly improved with medical  
5 mental health intervention.

6 As the Court is well aware, Mr. Heo comes from a  
7 loving, very supportive family. As the character letters  
8 reflect, he's got a long, well-chronicled history of being a  
9 mentor in his church and being an emotional rock for his  
10 family and friends.

11 In recent years, Mr. Heo began exhibiting odd  
12 behaviors, impulse control problems. The family immediately  
13 noticed something was off.

14 When I met Mr. Heo, there was a certain  
15 incongruity that met me right away. On one hand, I met  
16 this very mild-mannered, forthcoming, honest individual. I  
17 met his family who was very put together. And then I just  
18 read this charge that just didn't pair up. So something was  
19 clearly off. One week ago, we just found out why, he had  
20 been suffering from schizophrenia.

21 Mr. Heo and his family are still processing the  
22 reality of the diagnosis. On one hand, it's troubling to  
23 learn that your loved one or yourself is suffering from a  
24 mental illness.

25 On the other hand, there's a sense of relief.

1 Finally an explanation and a treatment plan and actually an  
2 end in sight. There's hope at the end of the tunnel.

3 Mr. Heo will not recidivate or be a risk for  
4 recidivism once he is treated. We know that he is treatable  
5 based upon the opinion by Dr. Compton.

6 Unfortunately, we don't know when Mr. Heo is going  
7 to get this treatment. As the Court noted, upon the  
8 sentence here today, there's already a hold in place out of  
9 the Eastern District. So he will be extradited to the Plano  
10 Division for the Eastern District of Texas where he may  
11 languish in a county jail without any mental health services  
12 for a year, maybe a year and a half.

13 I don't how long their dockets run, but clearly  
14 they don't run fast enough or adequately enough to give him  
15 the mental health services that he needs. That's probably  
16 the most punitive aspect about all of this is that we know  
17 what the cure is, but we simply can't give it to him.

18 So he may get worse over the pending year or year  
19 and a half or however long it takes for him to get his BOP  
20 designation. Furthermore, we know that the Bureau of  
21 Prisons has its own limitations.

22 We are going to ask the Court for a  
23 recommendation, a non-binding order that Mr. Heo serve his  
24 sentence at a Federal Medical Center. But again, the BOP  
25 does have its limitations.

1                   We therefore ask the Court to consider a downward  
2 variance. We had filed an objection asking for a downward  
3 departure, but we are going to reurge it as a variance.

4                   Under the new sentencing guidelines, Section  
5 4A1.3, a policy statement states that courts should consider  
6 a downward departure. Here we are urging it in the form of  
7 a downward variance for a prior conviction for a simple  
8 possession of marijuana.

9                   That is one that does not exhibit any features  
10 that would be consistent with distribution. Such was the  
11 case with Mr. Heo years ago in college. I believe he  
12 receives one criminal history point in paragraph No. 34 of  
13 the presentence report.

14                  If he were not to receive that criminal history  
15 point, he would be one Criminal History Category over a  
16 Criminal History Category I.

17                  We therefore would urge the Court to consider  
18 following the policy statement under 4A1.3 and consider  
19 sentencing Mr. Heo at one criminal history category down.  
20 That is from two to one, thereby reducing the guideline  
21 range from 51 to 63 months.

22                  We then would ask the Court to downward vary for  
23 all of the reasons that we previously stated in the  
24 sentencing memo and here today at argument.

25                  We also urge the Court to order this sentence to

1 run concurrently with the yet unimposed sentence that will  
2 come through the indictment that is pending in the Eastern  
3 District of Texas.

4 We respectfully disagree with opposing counsel.

5 We do not believe that Setzer binds the Court. On the  
6 contrary, we believe that Setzer is silent as to the issue  
7 as to whether or not one court can order its sentence to run  
8 concurrently or consecutively with the yet-to-be-imposed  
9 sentence in another district.

10 We ask this so that Mr. Heo can discharge from the  
11 Bureau of Prisons as soon as possible. Had these  
12 prosecutions been coordinated, we would have a different  
13 situation.

14 Yet, as it stands now, he's got to go start this  
15 process all over again in a district that runs twice as  
16 slowly as this division.

17 I hope that he gets competent counsel there. I  
18 hope that he gets a prosecutor who is sympathetic to the  
19 plight that he faces for the mental health concerns and  
20 needs and treatment that he deserves.

21 I hope that he doesn't get stacked or, you know,  
22 face more punishment than is greater than necessary. We  
23 would just simply ask this Court to do what is in its power  
24 to help effectuate those ends. Thank you, Your Honor.

25 THE COURT: Thank you.

1                   Sir, do you wish to speak on your behalf?

2                   THE DEFENDANT: Yes, sir. I would like to first  
3 apologize. Growing up I only come across as forms of candid  
4 jokes between my friends at the high school, but when  
5 something like my crime unfolded, it was no longer just  
6 filled with hopeful and wild imaginations. Rather, it  
7 instilled intimidation. And to put anyone into that  
8 position was a horrible decision I made through my childish  
9 act.

10                  So I would like to take this opportunity to  
11 apologize to the employees and also to the responding  
12 officers. I pray and hope that you all were and are able to  
13 go back to living and working like normal, unaffected as  
14 much as possible. I'm sorry.

15                  During the time between my arrest and today, I was  
16 able to look back at my life and point out what may have led  
17 me here. The meetings and evaluations I have had with my  
18 attorney, Mr. Lehmann, Mitigation Specialist Shay, and with  
19 Dr. Compton, through that I was able to learn to accept that  
20 I'm old enough and mature enough to stop having the same  
21 greedy and overreaching thoughts from my childhood and to  
22 find stability in life.

23                  I have a very loving and supportive family to whom  
24 I am very apologetic and overly grateful for and also make  
25 sure to receive the proper treatment I need for my mental

1 health condition.

2 Again, I would like to say sorry and that I am  
3 regretful and ashamed in the decisions I've made, and I ask  
4 for mercy and forgiveness, as I'll do everything it takes to  
5 never cross such a line.

6 THE COURT: Thank you.

7 MR. LEHMANN: Your Honor, my client's mother has  
8 indicated that she would like to address the Court. If she  
9 could come up briefly? Thank you.

10 THE COURT: Ma'am, would you raise your hand to be  
11 sworn, please.

12 (The oath was administered.)

13 MS. CHUNG: I do. My name is Angie Chung, and I'm  
14 the mother of Kyung Heo. Thank you, Your Honor, for giving  
15 me this opportunity to speak. I know you've read all our  
16 letters.

17 But I traveled all the way from Illinois last  
18 night to show in person Kyung Heo has our family support and  
19 love, and we've been together, and be always by his side.

20 It's kind of sad. He deeply regrets what he did,  
21 and he knows what he did wrong. But Kyung is still a kind  
22 young person and the son that we all know.

23 I please ask Your Honor for your consideration for  
24 leniency and allowing Kyung a chance to correct his actions.

25 I'm certain that Kyung is committed to making

1 amends and growing into a better and positive citizen. I'm  
2 so sure about that and confident. Thank you.

3 THE COURT: Thank you, ma'am.

4 All right. I will now state the sentence  
5 determined pursuant to Title 18 U.S.C., Section 3553.

6 I accept the plea agreement in this case.

7 It will be the judgment of the Court that the  
8 defendant is committed to the custody of the Federal Bureau  
9 of Prisons for a period of 57 months.

10 I do not order a fine.

11 I do order that the defendant make restitution --  
12 that there is no restitution, I'm sorry. The money has been  
13 returned.

14 That the defendant pay a \$100 mandatory special  
15 assessment.

16 That, upon his release, he be placed on supervised  
17 release for a term of three years. While on release, he  
18 shall comply with the terms of supervision set forth in  
19 Miscellaneous Order No. 64 and as outlined in Part G of the  
20 presentence report.

21 Is there any objection from the government to this  
22 sentence?

23 MS. MONTES: No, Your Honor.

24 THE COURT: From the defendant?

25 MR. LEHMANN: No, Your Honor.

1                   We would ask for two more housekeeping issues.

2                   First would be a recommendation that he participate in the  
3                   Residential Drug Abuse Program. And second, for a  
4                   non-binding recommendation at FMC Fort Worth.

5                   THE COURT: I will for sure recommend that he be  
6                   able to participate in mental health treatment services in a  
7                   facility that will accommodate that. To the extent that  
8                   facility is local, I will include my standard local  
9                   placement.

10                  MR. LEHMANN: Thank you, Your Honor.

11                  THE COURT: Now, you have the right to appeal this  
12                  sentence. You also have the right to apply for leave to  
13                  appeal *in forma pauperis*, if you are unable to pay the cost  
14                  of an appeal.

15                  And if you decide to appeal, your notice must be  
16                  filed within 14 days. Please instruct your counsel on how  
17                  you wish to proceed in that regard.

18                  Please follow your client's instructions on that  
19                  issue.

20                  Anything else from the government?

21                  MS. MONTES: No, Your Honor.

22                  THE COURT: Anything else from the defendant?

23                  MR. LEHMANN: No, Your Honor.

24                  THE COURT: Thank you both for being here.

25                  Good luck to you, sir.

1 We are in recess.

2 (The proceedings concluded at 10:20 a.m.)

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2 REPORTER'S CERTIFICATE  
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4 I, ZOIE WILLIAMS, RMR, RDR, FCRR, certify that  
5 the foregoing is a true and correct transcript from  
6 the record of proceedings in the foregoing entitled  
7 matter to the best of my ability to hear.

8 Further, due to the COVID-19 pandemic, some  
9 participants are wearing masks, and/or appeared via  
10 videoconferencing, so proceedings were transcribed to the  
11 best of my ability.

12 I further certify that the transcript fees format  
13 comply with those prescribed by the Court and the Judicial  
14 Conference of the United States.

15 Signed this 21st day of February, 2024.

16  
17 \_\_\_\_\_/s/ Zoie Williams\_\_\_\_\_  
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MR. LEHMANN: [8] 4/14  
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